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April 27, 2004

VIA HAND DELIVERY

Richard Collier, General Counsel
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
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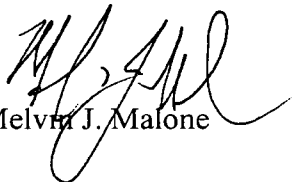
**RE: Tennessee Coalition of Rural Incumbent Telephone Companies and
Cooperatives Request for Suspension of Wireline to Wireless Number
Portability Obligations Pursuant to Section 251(f)(2) of the
Communications Act of 1934, as Amended
TRA Docket # 03-00633**

Dear Mr. Collier

For informational purposes, enclosed are thirteen (13) copies of two (2) state commission orders regarding wireline-to-wireless LNP. The New York Public Service Commission order and the Michigan Public Service Commission order, both of which deny the relief requested in the respective cases, address issues similar to those raised in the above-captioned matter.

If you have any questions or require additional information, please let me know

Respectfully,


Melvin J. Malone

MJM/cgb
Enclosures
cc: R. Dale Grimes
Timothy C. Phillips

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the petition of)
CENTURYTEL OF MICHIGAN, INC., and)
CENTURYTEL MIDWEST-MICHIGAN, INC., for)
temporary suspension of wireline-to-wireless number)
portability obligations pursuant to § 251(f)(2) of the)
federal Telecommunications Act of 1996, as amended.)
_____)

Case No. U-13729

At the December 9, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

On November 20, 2003, CenturyTel of Michigan, Inc., and CenturyTel Midwest-Michigan, Inc., (collectively, CenturyTel) filed a petition requesting that the Commission temporarily suspend their wireline-to-wireless local number portability (LNP) obligations to Commercial Mobile Radio Service (CMRS or wireless) providers in five Michigan exchanges¹ until at least May 24, 2004, pursuant to Section 251(f)(2) of the federal Telecommunications Act of 1996 (FTA), 47 USC 251(f)(2).

Each of the five exchanges is geographically located in one of the top 100 Metropolitan Statistical Areas (MSAs) in the United States. Federal Communications Commission (FCC) rules require that telecommunications carriers in the top 100 MSAs provide LNP by November 24,

¹Goodrich, Hadley, Marlette, Newport, and Borculo.

2003, unless a state commission grants a suspension of the LNP requirements under Section 251(f)(2) of the FTA.

Section 251(f)(2) of the FTA provides:

Suspensions and modifications for rural carriers. A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary—

- i. to avoid a significant adverse economic impact on users of telecommunications service generally;
 - ii. to avoid imposing a requirement that is unduly economically burdensome; or
 - iii. to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

47 USC 251(f)(2).

CenturyTel of Michigan, Inc., and CenturyTel Midwest-Michigan, Inc., each qualify as a "rural telephone company" as defined in 47 USC 153(37) and both are local exchange carriers with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide. CenturyTel maintains that until very recently it was in full compliance with all directives of the FCC relating to number portability.

On November 10, 2003, however, the FCC released an order² indicating that (1) LNP obligations exist even when the wireless carrier does not have a physical point of interconnection, or does not have numbering resources in the rate center where number porting is being requested, (2) porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's coverage area overlaps the geographic location in which the customer's wireline number

²See, *In Re Telephone Number Portability*, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116 (November 10 order).

is provisioned, and (3) wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between carriers.

CenturyTel complains that as a result of the November 10 order, it is confused and its LNP obligations are unclear. CenturyTel proposes that portability may not be technically feasible because of issues relating to the routing of traffic. Further, CenturyTel maintains, the FCC did not define "point of connection or numbering resources in the rate center," which were referenced in the order. Further, CenturyTel is concerned that the porting may require transport of wireline-originated calls to a point of connection with a wireless carrier outside the telephone company's exchange boundaries. This involves more than number portability, CenturyTel concludes, but encompasses location portability, as well.

CenturyTel points out that LNP is technically complicated and involves transporting the associated call, in addition to the number. CenturyTel does not know how it can accomplish this without the caller incurring toll charges and CenturyTel incurring potentially high termination costs. In many cases, CenturyTel maintains, it does not provide local exchange services beyond its own network and has no interconnection arrangement or obligation for the establishment of an interconnection point with other carriers at points beyond its network.³ CenturyTel further contends that the FCC has failed to account for the technical and operational issues that arise (in the absence of interconnection arrangements between carriers) for continued customer and E911 service.

Specifically, CenturyTel maintains that it has received portability requests, which have failed to specify, or incorrectly specified, the discrete geographical area or switch information or the

³See, letter dated November 10, 2003, from Vicki Norris, CenturyTel, to Orjiakor Isiogu, Director of Telecommunications Division at the Michigan Public Service Commission. CenturyTel wrote, "We understand that no interconnection agreement is needed." A copy of this letter is contained in the docket of this proceeding.

requests were too general to satisfy FCC requirements.⁴ Additionally, CenturyTel contends that other portability requests seek to obligate it outside the boundaries of the original rate center or were made by telecommunications carriers in areas outside its service territory.

CenturyTel is also concerned that the ported number will continue to be rated in the same fashion. CenturyTel contends that where a wireless carrier has not established an interconnection agreement for the establishment of an interconnection point with CenturyTel, it has no facilities or arrangements in place to direct calls to ported numbers. In these cases, the only way that calls can be completed will be to direct the calls to interexchange carriers (IXCs), which, in turn, will provide interexchange services, carry the calls to the distant interconnection point for completion, and impose a long distance charge. Additionally, CenturyTel will incur recurring expenses with each query or "dip" of the LNP database, including translation support efforts, back office implications concerning billing and plant records, LNP dip contract, and various expenses resulting from the receipt and handling of default routed traffic.

CenturyTel further argues that suspending CenturyTel's LNP obligations would serve the public interest, convenience, and necessity. CenturyTel opines that by granting the temporary suspension, the Commission would avoid or diminish the potential waste of resources until the confusion resulting from LNP is eliminated.

CenturyTel also claims that the suspension would avoid a significant adverse economic impact on end-users generally. CenturyTel proposes that the costs of implementing intermodal number portability are significant for hardware and software costs to achieve porting capability, ongoing

⁴See, letter from Fran Runkel, CenturyTel, to Fawn Romig, Manager of Industry Compliance and Operational Network Support at Sprint PCS (Sprint), "CenturyTel believes that current regulations establish that legitimate bona fide requests may only be sent by companies that have interconnection agreements that permit number porting." A copy of this letter was attached to the letter described in footnote 3 and is also contained in the docket.

data and administration costs, as well as those costs associated with establishing the proper arrangements with the affected carriers. Initial and ongoing costs incurred to satisfy the request of CMRS providers are ultimately paid by CenturyTel customers, with no reciprocal benefit from wireline-to-wireless number portability. CenturyTel argues that it has a limited customer base over which to spread its costs.

The Commission finds that the issues raised by CenturyTel's petition are issues within the sole jurisdiction of the FCC. Interestingly, the FCC declined to grant CenturyTel of Colorado, Inc.'s request for a stay of its LNP requirements pending judicial review.⁵ The Commission's sole responsibility in this docket, however, is to determine whether to approve a suspension or modification of FCC rules, based upon an alleged adverse economic impact or technical infeasibility if the suspension or modification would be consistent with the public interest, convenience, or necessity.

The Commission is not persuaded that it should suspend CenturyTel's LNP obligations. The docket file contains Sprint's LNP request, which was submitted to the Staff following a meeting with Vicki Norris, CenturyTel, and the Telecommunications Association of Michigan on November 7, 2003. An examination of that request reveals that it correctly identifies the geographical area, gives accurate switch information, and is specific enough to satisfy FCC requirements. Additionally, the FCC's November 10 order appears to rebut CenturyTel's representation that numbers cannot be ported even beyond the boundaries of the original rate center. Historically, even prior to the advent of wireline-to-wireless LNP, wireless calls have routinely been routed outside of local exchanges. Finally, the Staff points out that Sprint's LNP

⁵See, In the Matter of Telephone Number Portability, United States Telecom Association and CenturyTel of Colorado, Inc., Joint Petition for Stay Pending Judicial Review, CC Docket 95-116 (FCC 03-298), November 20, 2003.

request was submitted to CenturyTel on May 16, 2003, with a request for LNP in 16 exchanges in Michigan, which gave CenturyTel over 6 months to implement LNP by the November 24, 2003 deadline

Further, CenturyTel has not shown that it is technically infeasible for it to meet its portability obligations. Indeed, CenturyTel has indicated only that it "may not be technically feasible" but it has not indicated why it is technically infeasible to do so. To the contrary, CenturyTel has outlined how portability requirements could be effectuated.

Finally, CenturyTel has not advanced a specific cost analysis beyond only a vague reference to the speculative "potential waste of resources." Nor has CenturyTel shown a significant adverse impact on users of telecommunications service generally or that the portability requirements are unduly economically burdensome, as required by Section 251(f)(2) of the FTA. CenturyTel has not demonstrated that it will incur any costs that are different from, or more burdensome than, the costs of similarly situated wireless carriers or that the costs to provide LNP will be any different on May 24, 2004 than they are today. Indeed, even rural telephone companies must implement and bear the costs of portability if they receive a request to do so. The Commission is unconvinced that the burdens will disproportionately affect CenturyTel as compared with other carriers. CenturyTel has had sufficient notice and time to plan for implementation of portability⁶ and has been on notice since 1996 to prepare for implementation of LNP.

The Commission, therefore, cannot find that it is consistent with the public interest, convenience, and necessity to temporarily suspend CenturyTel's LNP obligations. Any deferment

⁶Initially, CMRS providers were required to become LNP-capable by June 30, 1999. Subsequently, the FCC extended the deadline twice, and required that CMRS carriers operating in the top 100 MSAs provide LNP upon request by another carrier effective November 24, 2003. CMRS carriers operating outside the top MSAs must become LNP-capable upon request by May 24, 2004 or within six months of a request.

of the FCC's number portability requirements at this time would be anti-competitive and anti-consumer. The Commission concludes that an extension of the porting deadline until May 24, 2004 would not serve the public interest because it unnecessarily delays the LNP benefits to the public. A further delay of LNP obligations would unnecessarily harm competition and consumers, whereas portability will promote competition by allowing consumers to move to carriers that would better serve their needs without having to give up their telephone numbers. Thus, we find that the public interest would be served by LNP implementation consistent with FCC requirements.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. CenturyTel's petition to temporarily suspend its LNP requirements is not consistent with the public interest, convenience, and necessity, and should be denied.

THEREFORE, IT IS ORDERED that the petition of CenturyTel of Michigan, Inc., and CenturyTel Midwest-Michigan, Inc., for temporary suspension of wireline-to-wireless local number portability obligations pursuant to Section 251(f)(2) of the federal Telecommunications Act of 1996 is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

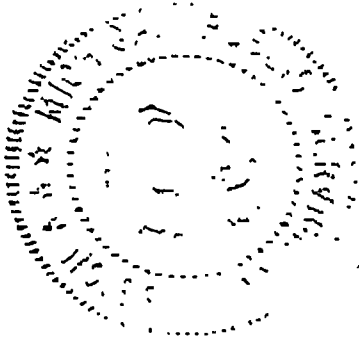
/s/ Laura Chappelle
Commissioner


By its action of December 9, 2003.

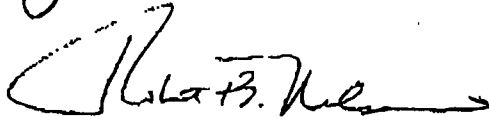
/s/ Mary Jo Kunkle
Its Executive Secretary


Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION




Chair


Commissioner


Commissioner

By its action of December 9, 2003.


its Executive Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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At a session of the Public Service

Commission held in the City of
Albany on March 16, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 03-C-1508 – Petition of Multiple Communications Companies for a Suspension
of Wireline-to-Wireline Number Portability Obligations

ORDER DENYING PETITION

(Issued and Effective April 19, 2004)

BY THE COMMISSION:

INTRODUCTION

By petitions filed on October 22 and December 15, 2003, the New York State Telecommunications Association, Inc. (NYSTA), on behalf of 24 small incumbent rural local exchange carriers (LECs) requests that the Commission establish proceedings to develop reasonable local number portability (LNP) implementation timeframes to support intermodal (wireline-to-wireless) porting, as well as the terms and conditions under which such porting should occur, and further requests that the Commission suspend, pursuant to its delegated authority under the Telecommunications Act of 1996 (the Act), the Petitioners' federal requirements to provide intermodal LNP obligations until such proceedings are held and outstanding issues are resolved.

Essentially, the petitioners' argue that implementation of LNP is technically infeasible, unduly economically burdensome for both customers and the petitioners, and,

therefore, is not in the public interest. The Commission has considered the petitioners' arguments and has not found them to be compelling. Network upgrades and other technical arrangements necessary to support LNP have not been shown to be either unduly costly or technically challenging. In addition, decisions made at both the federal and state level have found local number portability to be clearly in the public interest in a competitive telecommunications environment.

Based on our review of petitioners' arguments, their request to have this Commission suspend their federal obligations to provide intermodal number portability by May 24, 2004 will be denied based on a finding that implementation is technically feasible and is not unduly economically burdensome for petitioners or their end users. In addition, the provision of number portability has been fully litigated at both the state and federal level and consistently has been found to be in the consumer's best interest. Therefore, the petitioning companies will be expected to comply with the FCC's May 24, 2004 deadline for implementation.

BACKGROUND

On October 22, 2003, NYSTA filed a petition on behalf of 19 small incumbent rural local exchange carriers (LECs) requesting that the Commission suspend, pursuant to its delegated authority under the Telecommunications Act of 1996 (the Act), federal requirements to provide intermodal (wireline-to-wireless) local number portability in certain areas by November 24, 2003, pending review of the merits of the petition.

The petitioners requested a temporary suspension of number portability requirements pursuant to 47 U.S.C. 251(f)(2)¹, as an emergency action under the State's Administrative Procedure Act, in order to avoid the FCC's November 24, 2003 deadline for all wireline carriers within the top 100 Metropolitan Statistical Areas (MSAs) to

¹ 47 U.S.C. §251(f)(2) of the Act permits state commissions to grant carriers with fewer than two percent of the nation's subscriber lines relief from requirements imposed under the Act, providing that they demonstrate that the requirements are unduly burdensome financially or economically, as well as contrary to the public interest, convenience, and necessity.

provide intermodal number portability². The emergency action was denied³ based on a finding that the public interest would be better served if the Commission waited to act on the petition until after a formal comment period expired on December 27, 2003⁴. The Federal Communications Commission (FCC), in an order released November 10, 2003⁵, subsequently extended its November 24 intermodal porting deadline to May 24, 2004, the deadline for all rural carriers, not just those in the top 100 MSAs. Six of the petitioning companies serve customers in at least one rate center within a top 100 MSA, and the Intermodal Porting Order granting additional time to May 24 essentially satisfied the petitioners' initial request for immediate and temporary relief.⁶

On December 15, 2003, NYSTA filed a supplemental petition reiterating its initial request for suspension of intermodal porting, adding five additional carriers as parties to the petition, and raising additional objections to the FCC's porting requirements. It also made an additional submission on February 17, 2004, in response to several parties' comments on the petition. The independent companies joining in the petition are listed on Attachment 1.

Comments have been received from several wireless carriers in opposition to the petition and in support of number portability; those comments are detailed on Attachment 2.

² Several companies have rate centers, or a portion of a rate center, in a top 100 MSA area.

³ Case 03-C-1508 – Order Denying Emergency Stay of Federal Local Number Portability Obligations (issued November 21, 2003).

⁴ Notice of the petition was published in the State Register on November 12, 2003.

⁵ CC Docket No. 95-116, In the Matter of Telephone Number Portability, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (the "Intermodal Porting Order") (released November 10, 2003).

⁶ Wireless carriers were still required to be LNP capable by November 24, 2003.

PETITIONERS' POSITION

Petitioners request a suspension of their intermodal number portability requirements pursuant 47 U.S.C. §251(f)(2) of the Act. This section permits state commissions to consider and grant carriers with fewer than two percent of the nation's subscriber lines relief from the requirements imposed under the Act, provided that they demonstrate that the requirements are unduly burdensome financially or economically, as well as contrary to the public interest, convenience, and necessity.⁷

Petitioners are requesting suspension based on their belief that, despite the FCC's Intermodal Porting Order, the specific obligations of rural carriers to provide intermodal LNP remain unclear, that considerable uncertainty on the rating and routing of ported calls remains, and that unresolved issues should be clarified or eliminated prior to implementation of LNP by any of the petitioners. In addition, the petitioners claim the FCC's deadlines do not account for the realities of existing ILEC operations.

Therefore, petitioners argue that additional time is required to develop reasonable implementation timeframes, as well as definitive terms and conditions under which intermodal porting would occur, and they request that the Commission establish further proceedings to address these issues. In the interim, they request that the Commission suspend their intermodal porting obligations until such proceedings are completed, and the outstanding issues resolved.⁸

The initial and supplemental petitions raised three principle claims: that number portability would impose unnecessary costs on customers; that number portability would be economically burdensome to carriers and wasteful of resources if applied too broadly without further consideration; and that number portability is technically infeasible. Based on these claims, petitioners are requesting a finding that number portability is, therefore, contrary to the public interest.

⁷ The Commission agrees that each petitioner is a "rural telephone company" as defined in 47 U.S.C. §153(37) of the Act, in that they are local exchange carriers with fewer than two percent of the nation's subscriber lines.

⁸ Petitioners do not, however, set a definite date by which they would be LNP-capable.

The petitioners state that number portability may not be technically feasible because porting requires wireline calls originating on the petitioners' networks to be transported to a point of connection with a wireless carrier outside the telephone company's exchange boundaries, and that, currently, no direct points of interconnection with wireless carriers exist. Therefore, the lack of any definitive interconnection arrangements with wireless carriers would mean that calls initiated by their customers to any numbers ported to wireless carriers would require transport over the inter-exchange carrier (IXC) network, thereby imposing toll charges on calling customers. Petitioners state unequivocally that interconnection agreements should be a prerequisite to any implementation of LNP. Petitioners further claim that pending proceedings at the FCC regarding "points of interconnection" and what constitutes a numbering resource in a rate center are pending.

The petitioners claim that suspension of the intermodal porting requirements would be in the public interest, in that it would avoid a significant adverse economic impact on their end-users generally. The petitioners argue that they are entitled to recover initial and ongoing costs incurred to satisfy the request of wireless providers, and that such costs would ultimately be paid by their end users. The petitioners believe that most customers will see no commensurate benefit from wireline-to-wireless number portability and that they have a limited customer base over which to spread their costs in any case.

In addition, the petitioners maintain that because they have not had any requests for number portability from CLECs, they have generally not deployed the hardware and software in their switches to support number portability generally, and while they did receive portability requests from wireless providers' up to 12 months ago, these requests lacked specificity or otherwise failed to satisfy FCC requirements.⁹ Furthermore, they contend that there was no clear requirement for intermodal porting

⁹ For example, by letters dated July 23rd, August 14th, and September 5, 2003, Kraskin, Lesse & Cosson, LLC, Counsel for some of the petitioning companies, forwarded notice to Verizon Wireless questioning and challenging the validity of Verizon Wireless' LNP request.

prior to the FCC's Intermodal Porting Order, and, therefore, no request from a wireless carrier received before that date could be considered "bona fide" on this basis alone.

Petitioners also indicate, in their February 17 submission in response to the Commission's request for comments, that companies will need additional time to establish internal and backroom functions associated with porting as well as time to make the necessary arrangements to access databases associated with number portability.

Therefore, given the technical uncertainties, coupled with a possible significant cost burden, and weighed against what they view as a questionable public benefit, the petitioners believe postponement of their obligations until outstanding issues are resolved is in the public interest and better serves their rural constituencies. The specific issues raised by petitioners are described in more detail below.

Technical Issues

Petitioners claim that it is technically infeasible for them to implement LNP because physical connectivity and/or other interconnection terms, conditions and agreements with wireless carriers do not exist; that FCC orders provide no guidance on how wireline-to-wireless calls to ported numbers beyond the ILECs' service territories should be transported or rated, or whose facilities should be used to carry the calls. In addition, the petitioners did not consider the wireless carriers' LNP requests, some of which were received as far back as March 2003, to be "bona fide" because they were too generic to satisfy FCC requirements and, according to petitioners, sought to obligate them to provide location or geographic portability, rather than service provider portability.¹⁰

¹⁰ Service provider number portability is defined as the ability to retain one's number even if the underlying provider of the service changes. Geographic or location portability is the ability for a subscriber to take his or her number to a carrier operating outside of the rate center in which the number was originally assigned. Neither the FCC nor this Commission consider intermodal porting within the same rate center to be geographic portability as petitioners claim.

Specifically, petitioners' claim that calls to points outside the ILEC network, and, coincidentally, outside ILEC service areas, are traditionally routed, and thus rated, by the customer's chosen IXC or toll carrier. This would mean that, absent network and business arrangements by which traffic is exchanged between the ILEC and wireless carriers, there is no mechanism in place to continue to rate such calls as local, even if the ported number remains in a wire center that is local to the ILEC. In other words, such calls cannot, as required by the FCC, be treated the same as they were prior to the port.

Therefore, petitioners argue that the completion of end user traffic can only be addressed through formally established arrangements between and among the carriers, and no construct currently exists under which intermodal porting can proceed unless the toll network is used. The Petitioners also argue that the FCC orders provide no guidance on the rating of calls to ported wireless numbers in order to accomplish the goal of rating ported calls the same as they were prior to the port.

Economic Issues

The petitioners contend that wireline to wireless porting and routing of calls will be economically burdensome to the customer. Additionally, petitioners argue that they would be required to expend significant resources to deploy LNP in the absence of a cost recovery mechanism that spreads those costs to those who benefit from the actual porting of their numbers.¹¹

Most wireless carriers do not have points of interconnection within the service areas of rural carriers, and the petitioners contend that this will force small carriers to push calls to ported numbers on to the IXC network in order to complete them, thereby imposing unnecessary toll charges on customers. In the alternative, third party

¹¹ See, CC Docket No. 95-116, In the Matter of Telephone Number Portability, Third Report and Order (FCC 98-82) (released May 12, 1998), wherein a cost recovery model was suggested. This matter will be discussed, infra.

transport arrangements would be required, with the associated increase in cost to be borne by their rural customers.

In the petitioners' view, the imposition of an end user charge on each ILEC customer without some indication that there is an actual demand for portability justifies Commission action to avoid "significant adverse economic impact" on the petitioners' end users. The companies have submitted company-specific estimates of identifiable implementation costs.

The Public Interest

Petitioners argue that it is in the public interest for the Commission to grant the request for suspension of intermodal number portability because implementation will 1) result in significant economic harm for end users; 2) impose requirements that are unduly burdensome; and 3) impose requirements that are technically infeasible. In addition, petitioners believe there will be "miniscule" demand for intermodal porting.

Therefore, the petitioners request that implementation be suspended until the issues cited by petitioners, as discussed herein, are addressed and until the results of a large market intermodal rollout are reviewed and an assessment of its shortcomings, as well as the effects on rural areas, is made.

DISCUSSION

Petitioners have raised essentially the same arguments through two petitions and the February 17 letter in response to comments requested by the Commission. Their arguments against intermodal number portability are basically technical and economic. However, at their core, their arguments are directed at federal requirements for basic number portability as well as the requirements under the Act to interconnect their networks with those of other telecommunications carriers. We will

address the arguments raised by petitioners as to why the Commission should grant a suspension under §251(f)(2) below.¹²

Technical Issues

The Petitioners have not provided compelling evidence that it is technically infeasible for them to meet their portability obligations. Rather, they have made numerous unsupported statements regarding unspecified "existing technical limitations" that could lead to non-completed calls as well as customer confusion. In fact, however, some of the petitioners, in individual pleadings, have outlined how portability requirements could be satisfied and at least five of the twenty-four petitioners have specified that they have LNP software and hardware already installed in their networks which would enable them to proceed with implementation.¹³ In addition, many of the

¹² Nextel Communications, Inc. argues (see summary of comments on Attachment 2) that the FCC has exclusive jurisdiction over resolution of local number portability issues. However, the FCC has stated that companies may seek waivers of the FCC's rules but has not determined that it is the sole resource available to ILECs. Therefore, it is the Commission's view that it has jurisdiction to review this petition under §251(f)(2) of the Act.

¹³ Armstrong, Chautauqua & Erie, Taconic and Warwick Valley Telephone companies indicated that they have LNP equipment installed, but not yet tested. Oneida County Rural indicated that it is "already capable of wireline to wireless portability". Nineteen of the 24 petitioning companies indicated that they could be LNP-capable within six months. Therefore, if these companies commenced the process to be LNP-capable in November 2003, at the time the instant petition was filed, the majority of petitioners would meet the FCC's May 24 deadline for intermodal porting. It is unclear whether any of these companies have commenced the process; however, as will be discussed, we will expect petitioners to be LNP-capable by May 24, 2004.

petitioners have indicated in their annual Construction Budget reports to the Commission that they are LNP capable.¹⁴

That many petitioners claim that they have no LNP capability because they have never received a "bona fide request" from a wireline CLEC has no bearing on the question of the technical feasibility of implementing intermodal portability. In fact, requests for intermodal portability were received by many companies almost a year ago, and, in the Commission's view, it would have made sense for companies that received such requests, particularly those with rate centers in a top 100 MSA, to be proactive in identifying backroom operations as well as in ordering and installing number portability capability onto their switches at that point.

The petitioners also expressed concern that wireless carriers would arbitrarily re-assign ported numbers to foreign rate centers, which could adversely affect traffic routing and customer cost. In fact, current federal numbering rules do not permit reassignment of NXX codes; therefore, all ported numbers must remain associated with their original rate center.

Porting Requirements

The FCC, in its Local Number Portability First Report and Order,¹⁵ determined that LECs were required to provide number portability to all

¹⁴ All of the independent telephone companies are required to submit an annual Construction Budget to the Commission by March 31st of each year. Within this process, each company is asked to: "Indicate if your central offices will be able to process calls to exchanges affected by local number portability and whether you, or a third party, will be performing the database queries." In March 2003, a majority of the 40 incumbent local exchange carriers responded affirmatively to this question, although some companies indicated that they were employing alternative methods to process such calls. Most indicated that a third party was performing database queries on their behalf. We anticipate that a third party would perform queries for intermodal portability as well.

¹⁵ CC Docket No. 95-116, In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, (FCC 96-286) (released July 2, 1996) (First Report and Order).

telecommunications carriers, including wireless carriers that provide local exchange or exchange access service within the same MSA.¹⁶ LECs are required to port numbers to wireless carriers whose "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number was originally associated, so long as the porting-in carrier maintains the number's original rate center designation following the port. Therefore, providing intermodal porting is consistent with the FCC's requirement that carriers support their customers' ability to port numbers while remaining at the same location.

The FCC has further concluded that the porting of a number from a wireline carrier to a wireless carrier is not location or geographic portability, as petitioners are claiming. The FCC found that "porting from a wireline to wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same." What this means is that any wireline-to-wireless number associated with a specific rate center will remain associated with that rate center so long as the NPA NXX remains the same, and, therefore, petitioners' concern that porting out to a wireless carrier is a form of "geographic" or "location" portability, is groundless.

Interconnection Agreements

Petitioners contend that because wireless providers do not have Commission approved, legally-binding interconnection agreements with the ILECs, porting between themselves and wireless carriers cannot be implemented, absent a template for routing, rating and compensating for such calls.

In fact, the FCC has affirmed that wireless carriers are not required to enter into Section 251 (of the Act) interconnection agreements with wireline carriers solely for the purpose of porting numbers.

¹⁶ First Report and Order, paragraphs 77 and 152.

LNP Requests

Petitioners have stated that the requests for portability received by the member companies from wireless carriers are incomplete and/or not sufficiently detailed. The FCC has confirmed that wireline carriers may not refuse a port request if the request is accompanied by the appropriate port validation information.¹⁷ The Commission has reviewed several of the requests sent by the wireless carriers to the petitioners, and concludes they contain all of the necessary information required by the ILECs to act upon the requests. To the extent there is a need on the part of either side for the exchange of additional information in order to fulfill porting requests, we believe that mutual cooperation (as opposed to adversarial posturing) is more productive and should be initiated as required.

In addition, we note that LNP requests from Verizon Wireless and Sprint were submitted to many of the petitioners between May 16 and October 23, 2003. In some instances, individual petitioners received multiple LNP requests from one or more of the wireless carriers. Based upon the dates of the earlier requests, it is our view that many of the petitioners have had adequate time to prepare for implementation of number portability by the required deadline. In fact, as discussed earlier, requirements for basic number portability have been in place since the FCC issued its original LNP order in 1996, and therefore, the need to prepare for its eventual implementation should have come as no surprise to petitioners.

The Commission also notes that, while the petitioners asserted in a letter to the Secretary on November 20, 2003, in conjunction with their request for emergency action, that they would continue to work in good faith to implement the FCC's intermodal

¹⁷ Intermodal Porting Order, paragraphs 18 and 22.

porting directives of November 10, 2003, to date, it is unclear whether they have made any material effort to meet that commitment.¹⁸

Routing and Rating of Traffic

Petitioners argue that, absent any direct connectivity or alternative transport arrangements with wireless carriers, ported calls would be forced on to the caller's toll carrier's network since rural ILECs do not carry calls beyond their service territory boundaries. In reality, however, the rural ILECs currently are transporting and receiving calls to and from wireless networks under an existing arrangement which puts the traffic onto Verizon New York's network for delivery and completion.¹⁹ This arrangement has been in effect for years, and it is not clear why number portability of any kind would disturb or disrupt this arrangement. There is no requirement for direct connection with wireless carriers, and to the extent that third party transport already exists, we see no circumstance by which intermodal portability would exacerbate the situation, nor impose an additional requirement on petitioners to find alternative arrangements.

Petitioners, like all LECs, rate calls as local or toll by comparing the originating and terminating NPA-NXX codes. Thus, if the NPA-NXX codes of the calling and called parties are associated with the same rate center or local calling area, the company serving the calling party will rate the call as local. Conversely, if the NPA-NXX codes of the calling and called parties are associated with rate centers in different local calling areas, the LEC serving the calling party will rate the call as a toll call.

As discussed, *supra*, the FCC, in its Intermodal Porting Order, declared that wireless carriers porting wireline numbers on their networks are required to maintain the

¹⁸ As previously indicated, we have received no information whether companies have moved forward with the establishment of backroom operations or switch modifications, or have entered into further negotiation with wireless carriers. In addition, we have no information whether those companies that already have LNP switch capability have proceeded to the test phase.

¹⁹ *See*, Cases 00-C-0789 and 01-C-0181, Order Granting in Part Petitions for Reconsideration, Clarification or Rehearing of September 7, 2001 Order (issued August 16, 2002), which addressed issues related to the completion of local calls between the independent companies and competitive carriers.

numbers' original rate center designation following the port. Therefore, since numbers ported to wireless carriers must carry the same NPA-NXX, those numbers will continue to be associated with the pre-port rate center. As such, calls to that number will continue to be rated and billed in the exact manner as they were prior to the port; the only material difference is that the number now resides on a different carrier's network. Therefore, petitioners' concerns that calls might be rated differently, thus confusing consumers, is misplaced.

Economic Issues

FCC number portability orders permit incumbent local telephone companies to recover certain costs of providing number portability by charging their customers a monthly fee for a period of five years.²⁰ Petitioners provided individual estimates of the cost of number portability to support their contention that intermodal portability is unduly economically burdensome. However, no company provided a detailed analysis of the impact on their respective customers in the petitions.

Using the company submissions, the Commission does not find a basis to conclude that there would be "significant adverse economic impact." We conclude that these cost estimates produced increments that would amount to less than one dollar per subscriber line per month over five years.²¹ The FCC has stated that some portion of other costs directly related to number portability, such as third party database dip contracts, may be recoverable, and, in any case, is not likely to significantly impact

²⁰ Carriers are not required to pass the costs to implement number portability on to their customer base, and could choose to absorb such costs.

²¹ Based on cost estimates submitted by petitioners, the monthly federal LNP surcharge would be approximately \$0.06 to \$0.58, per customer, depending on the company, which is consistent with national averages. The petitioners' February 17 comments allude generally that the costs for some carriers may be significantly higher; however, no support was given, and it is not supported by the cost figures submitted by the individual petitioners.

rates.²² Therefore, the Commission finds petitioners have not adequately demonstrated that there is significant adverse economic impact on their end users, as required by Section 251(f)(2) of the Act.

The Public Interest

The petitioners claim that LNP is contrary to the public interest in that it would impose a significant economic burden on both carriers and customers while providing limited benefit in return. As previously stated, the economic burden does not appear to be prohibitive. Therefore, the public interest would be better served by proceeding with the federal requirements to implement intermodal number portability.

CONCLUSION

The viability of offering number portability to consumers have been addressed on numerous occasions, both at the state and federal level, since the passage of the Telecommunications Act in 1996, and it has been consistently shown to be in the public interest. This Commission has long been an active proponent of the view that number portability is a necessary component of any truly competitive telecommunications environment, and the FCC, in carrying out its obligations under the Telecommunications Act of 1996, has issued numerous orders that reaffirm the importance of number portability as well.

Despite petitioners' fears that number portability, or even competitive interconnection itself, will impose significant economic burdens on individual carriers or their customers, the Commission concludes there is an insufficient basis to make a finding under Section 251(f)(2) of the Act. We will not suspend federal intermodal number portability requirements based on a determination that implementation is not

²² See, for example, CC Docket No. 95-116, In the Matter of Telephone Number Portability, Fourth Memorandum Opinion and Order on Reconsideration, FCC 99-151 (released July 16, 1999); and see also, CC Docket No. 99-35, In the Matter of Long-Term Number Portability Tariff Filings, Memorandum Opinion and Order (released July 16, 1999).

currently in the public interest. In fact, as noted, number portability has consistently and repeatedly been found to be in the public interest at both the state and federal levels. In our view, the petitioners' lacked foresight in not planning for its eventual implementation long before this time. Therefore, the petitioning companies should be prepared to implement intermodal portability no later than May 24, 2004, consistent with the FCC's Intermodal Porting Order.

The Commission orders:

1. The petitions filed by the New York State Telecommunications Association, Inc. on behalf of 24 small incumbent rural local exchange carriers (LECs) requesting, inter alia, that the Commission suspend, pursuant to its delegated authority under the Telecommunications Act of 1996 (the Act), the petitioners' federal requirements to provide intermodal LNP obligations is denied.

2. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

List of Petitioners

Original Petition:

Armstrong Telephone Company
Berkshire Telephone Corporation
Cassadaga Telephone Corporation
Champlain Telephone Company
Chautauqua and Erie Telephone Corporation
Chazy and Westport Telephone Company
Crown Point Telephone Corporation
Dunkirk and Fredonia Telephone Company
Empire Telephone Corporation
Germantown Telephone Company, Inc.
Hancock Telephone Company
Margaretville Telephone Company
Middleburgh Telephone Company
Oneida County Rural Telephone
Pattersonville Telephone Company
State Telephone Company
Taconic Telephone Corporation
Trumansburg Home Telephone Company
Warwick Valley Telephone Company

Added in December Supplemental Petition:

Citizens Telephone Company of Hammond, New York
Delhi Telephone Company
Ontario Telephone Company
Newport Telephone Company
Nicholville Telephone Company

Summary of Comments ReceivedCOMMENTS ON INITIAL PETITIONNextel Communications, Inc.

Nextel believes that the issues raised in the petition and supplement fall under the jurisdiction of the FCC and have in fact already been addressed by the FCC, especially in light of the November 10, 2003 Order. Nextel also points out factual inaccuracies in the petition. The claims that LNP leads to location portability, that information beyond required port validation, and that interconnection agreements are required are both false and already addressed by the FCC.

Nextel also states that the petitioners failed to satisfy §251(f)(2) requirements. LNP is not economically or financially burdensome and there are no technical impediments other than the time and money required for implementation. Suspension is not in the public interest because it would deny rural customers the benefits of competition.

Finally, LECs have had years to prepare for LNP and there is little reason for further delay.

AT&T Wireless Services, Inc.

AT&T Wireless states that all LECs have had at least some LNP obligation since December 31, 1999. Furthermore, all issues raised in the petition have already been addressed by the FCC, and the six month extension granted to carriers within the top 100 MSAs until May 24, 2004 is sufficient. Finally, LNP is in the public interests because it opens rural markets to competition, and having LNP available in some places but not others would lead to customer confusion.

Sprint Corporation

Sprint states that the petitioners have failed to satisfy any of the §251(f)(2) requirements for relief. Sprint's own experience with its ILEC division shows that wireline-to-wireless is technically feasible, and that the petitioners have not identified any specific technical obstacles. Furthermore, porting will have absolutely no effect on call routing as the petitioners claim.

Sprint states that LNP is not unduly burdensome economically and provides some estimates of the per-line costs of implementation which are quite small. Because LECs are entitled to recover these costs there will be no financial impact on the carriers at all, and any costs passed on to customers will be minimal.

Sprint states that not only would the public interest not be served by a suspension, but that it would be actively harmed. Lack of LNP is an impediment to competition, and the petitioners claim not to have received any customer requests for wireless porting is irrelevant. Wireless carriers will not market wireline-to-wireless portability until they are sure it will be available, and it will be the wireless carriers, not the LECs, who receive the requests.

Sprint also highlights the benefits to number conservation provided by LNP. If the petitioners are excused from number portability they will also be excused from number pooling, which has been an extremely effective conservation tool. Porting may also relieve wireless carriers from the need to unnecessarily open new codes.

Finally, the petitioners claims that LNP will require toll routing or that LNP leads to location portability are incorrect. The FCC has also already made clear that interconnection agreements are not necessary.

Omnipoint Communications, Inc. (T-Mobile)

T-Mobile believes that the FCC has resolved all issues raised in the petition for carriers operating within the top 100 MSAs, and that the remaining petitioners have not satisfied the requirements for relief under §251(f)(2).

The FCC has determined that interconnection agreements are not necessary, nor are wireless carriers required to have numbering resources in the rate center to which a ported number is assigned. It has also been determined that porting numbers to wireless does not constitute location portability.

T-Mobile also states that there is no undue economic burden to carriers or customers imposed by LNP, and the petitioners have not successfully demonstrated that LNP is technically infeasible.

COMMENTS ON THE SUPPLEMENTAL PETITION

Nextel Communications, Inc.

Nextel notes that the supplemental petition does not add anything significant to the original petition, and disagrees with the petitioners statement that the FCC's November 10, 2003 Order leaves significant implementation issues unresolved.

Nextel states that the FCC resolved most of the issues raised in the original petition with this Order, and repeats its objections to suspension. Nextel also points out that the November Order directs rural LECs to file any request for waivers or extensions directly with the FCC.

COMMENTS RECEIVED AFTER COMMISSION NOTICE

NYSTA

NYSTA filed, on behalf of the petitioners, comments essentially reiterating the positions taken in the original and supplemental petitions.

NEXTEL PARTNERS INC.¹

Nextel Partners notes that the FCC's January 16 Order grants additional relief to small carriers within the top 100 MSAs, and further demonstrates the federal nature of the subject matter included in the petition. The petition should be denied on jurisdictional grounds or, in the alternative, on public interest grounds.

¹ This entity is separate and distinct from Nextel Communications, Inc